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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,067	10/27/2003	Harry R. Brutsche III	BRUT 2795000	3824

21909 7590 10/04/2005

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EXAMINER
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NGUYEN, TRINH T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/694,067	BRUTSCHE ET AL.	
	Examiner	Art Unit	
	Trinh T. Nguyen	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Election dated 8/15/05.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 8-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/27/03</u> . | 6) <input type="checkbox"/> Other: _____  |

*Handwritten initials*

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Figures 1A-1B as directed to claims 1, and 3-7 (note that claim 2 is directed to the nonelected invention/species of Figures 2A-2B, claims 8-14 are directed to the nonelected invention/species of Figures 2A-2B, and claims 15-21 are directed to the nonelected invention/species of Figures 3A-3E) in the reply filed on 8/15/05 is acknowledged.
2. Therefore, claims 2, 8-28 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention/species, there being no allowable generic or linking claim.
3. Applicant's election with traverse in the reply filed on 8/15/05 is acknowledged. However, the only proper traverse to an election of species requirement is to state that the species are not patentably distinct and if Applicant wish to do so, they may, and their admission that one species is not patentably distinct over the other, will provide an express admission that a rejection of one species necessarily is a rejection of all species. For the reason(s) given above, it is believed that the requirement is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

4. Claim 6 is objected to because of the following informalities: the term "said exit" should be --said opening--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Staas (US6047499).

Staas discloses a tray (10) for supporting a planter comprising:

- a) a bottom having an upper surface and a lower surface;
- b) one or more side walls extending upwardly from the bottom of the tray to form a container; and
- c) a drain having an opening (43) formed in said tray, at least a portion of the drain opening positioned at or below the level of the upper surface of the bottom of the tray.

For claim 3, Staas discloses said bottom has at least one raised surface (18) for supporting a planter above said upper surface.

For claim 4, Staas discloses the tray is formed of a substantially waterproof material.

For claim 5, Staas discloses the waterproof material selected from the group comprising polypropylene, polyurethane, polycarbonate, or UBS plastic.

For claim 6, Staas discloses the tray is provided with a fitting (47,44) at said exit for connecting a drainage tube.

For claim 7, Staas discloses said drainage tube (42) has a generally planar

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lower surface and a generally curved upper surface, said upper surface having a low profile, and said drainage tube having a hollow passageway for conducting water away from said tray.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as cited on PTO-form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T Nguyen  
Primary Examiner  
Art Unit 3644

9/29/05